

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO
SANTA FE DIVISION**

GABE HERNANDEZ,

Plaintiff,

v.

LAS CRUCES SUN NEWS,

Defendant.

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NO. 6:09-cv-491

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. § 1331, Defendant, LAS CRUCES SUN NEWS, files this notice of removal from the First Judicial District, County of Santa Fe, State of New Mexico, to the United District Court for the District of New Mexico. The grounds for removal are as follows:

1. Plaintiff, Gabe Hernandez (hereinafter “Plaintiff”), commenced this action by filing an Original Petition (hereinafter referred to as the “Complaint”) on April 15, 2009, in the First Judicial District of the County of Santa Fe, State of New Mexico. The case was docketed as Cause No. D-101-CV-2009-01173 styled *Gabe Hernandez v. Las Cruces Sun News*. True and correct copies of the Complaint and Executed Waiver of Service are attached hereto as Exhibit A.

2. On May 5, 2009, Plaintiff served a copy of the Complaint, along with a Waiver of Service of Summons by regular mail. (*See* Letter & Envelope postmarked 5/5/09, Exhibit B). The Complaint and Waiver of Service of Summons were received by Defendant on May 7, 2009. (*Id.*) Accordingly, pursuant to 28 U.S.C. § 1446(b), this Notice of Removal is timely filed.

3. Concurrent with the filing of this notice, Defendant is serving this notice upon Plaintiff’s counsel and filing a copy of the notice with the Clerk of Court for the County of Santa Fe, New Mexico.

Grounds for Removal

4. This case is a civil action over which this Court has original jurisdiction pursuant to 15 U.S.C. § 1331. The Plaintiff's Complaint contains a claim arising under federal law pursuant to the Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101, et seq, as amended. Specifically, Plaintiff alleges that he was denied a reasonable accommodation and subsequently terminated because of a disability. In addition, any and all state law claims joined with Plaintiff's federal claim may be removed pursuant to 28 U.S.C. § 1441(c).

5. Pursuant to 28 U.S.C. §§ 1331 and 1441, removal of the above-titled state court action to this Court is appropriate. Further, pursuant to 28 U.S.C. § 124(d)(3), removal to this Court is proper because Santa Fe County is located within the jurisdiction of the United States District Court for the District of New Mexico.

6. Pursuant to 28 U.S.C. §1446(a), attached hereto as Exhibit A are true and correct copies of all papers that have been filed with the state court from which this removal is sought.

WHEREFORE PREMISES CONSIDERED, Defendant LAS CRUCES SUN NEWS respectfully request that this Court assume full jurisdiction over this action.

Respectfully submitted,

**SCOTT, HULSE, MARSHALL, FEUILLE,
FINGER & THURMOND, P.C.**

P.O. Box 99123

El Paso, Texas 79999-9123

(915) 533-2493

(915) 546-8333 Telecopier

By: /s/ M. Mitchell Moss

M. MITCHELL MOSS

New Mexico State Bar Number 7747

ROSEMARY M. MARIN

Pro Hac Vice (application to be filed)

Attorneys for Defendant

CERTIFICATE OF SERVICE

I hereby certify that on the 18th day of March 2009, I electronically filed the foregoing with the Clerk of Court using the CM/ECF system, I further certify that I have sent a copy of the foregoing to Timothy L. White, P.O. Box 25646, Albuquerque, New Mexico 87125, Attorney for Plaintiff, via certified mail, return receipt requested, on this the 18th day of May, 2009.

/s/ M. Mitchell Moss

M. MITCHELL MOSS

Exhibit A

FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

ENDORSED
First Judicial District Court

APR 15 2009

my
Santa Fe, Rio Arriba &
Los Alamos Counties
PO Box 2268
Santa Fe, NM 87504-2268

GABE HERNANDEZ,

Plaintiff,

v.

Cause No. D-101-CV-2009-0173

LAS CRUCES SUN-NEWS,

Defendant.

COMPLAINT FOR DISABILITY DISCRIMINATION

Gabe Hernandez, by and through his attorneys of record, Valdez and White Law Firm, LLC, bring this complaint as follows:

JURISDICTION AND VENUE

1. This action is brought to remedy discrimination by defendant Las Cruces Sun News against plaintiff on the basis of his disability, physical handicap and/or serious medical condition.
2. Plaintiff is a resident of Santa Fe County, New Mexico.
3. Defendant Las Cruces Sun News (LCSN) does business at 256 West Las Cruces Avenue, Las Cruces, New Mexico 88004. Defendant also does business as Texas-New Mexico Newspapers Partnership (TNMNP). TNMNP is a partnership between Gannet Texas, LP and Northwest New Mexico Publishing Company. On information and belief, defendants LCSN may be served by the registered agent for service of process of its ultimate parent company MediaNews Services, Inc., at 123 East Marcy Street, Santa Fe, New Mexico 87501.

4. Defendant LCSN and TNMNP were plaintiff's employer and a person as defined by the Americans with Disabilities Act as amended (ADAA), and the New Mexico Human Rights Act (NMHRA).

5. This Court has jurisdiction over the subject matter of this action as all acts complained of occurred in New Mexico. Venue is proper in this County as plaintiff resides here, defendant does business here and their registered agent for service of process is in this County.

6. Plaintiff has a disability as described below and as defined by the ADAA. Plaintiff has a physical handicap and/or serious medical condition as defined by the NMHRA.

7. Plaintiff has exhausted all required administrative remedies and his complaint is timely filed.

FACTUAL ALLEGATIONS

8. Plaintiff was terminated by defendant on or about April 3, 2006.

9. When he was hired, defendant knew that plaintiff had disabling knee and back conditions that substantially affected his ability to perform manual tasks, walk, stand, lift, bend and work, or do so when active. Plaintiff advised defendant of these disabilities or physical handicaps in his application information and orally when he advised them that he had been forced to leave his last employment when that employer refused to reasonably accommodate his disabilities.

10. Plaintiff successfully performed the essential functions of his job as a district sales manager until defendant changed certain of his duties, and refused to accommodate plaintiff's disabilities or physical handicaps.

11. Defendant terminated plaintiff without engaging in the interactive process to attempt accommodating his disabilities required by law.

12. Defendant terminated plaintiff because it regard him as disabled or as having a physical handicap.

13. Defendant terminated plaintiff because he had a record of having a disability or physical handicap.

COUNT I: DISCRIMINATION ON THE BASIS OF DISABILITY IN VIOLATION OF THE AMERICANS WITH DISABILITIES ACT, AS AMENDED, AND THE NEW MEXICO HUMAN RIGHTS ACT

14. Plaintiff incorporates by reference the allegations of each paragraph above.

15. Plaintiff has a disability, physical handicap or serious medical condition as defined by the ADAA and/or the NMHRA, or was regarded as having such disability or physical handicap, or has a record of such disability or physical handicap.

16. Plaintiff was qualified for his job as district sales manager, with or without reasonable accommodation.

17. Defendant refused plaintiff a reasonable accommodation.

18. Plaintiff suffered an adverse employment action due to his termination.

19. Plaintiff's termination was due to his back and knee conditions, that are disabilities or physical handicaps.

20. Plaintiff has suffered damages due to his termination in the form of all compensable damages allowed by law.

21. Defendant's conduct in refusing to accommodate plaintiff's disabilities or physical handicaps was willful and in reckless disregard of plaintiff's rights, entitling him to punitive or exemplary damages as to his claims under the ADAA, only.

For the reasons stated, Plaintiff seeks judgment against defendant for damages in the form of back and front pay, compensatory damages, punitive damages as permitted by the ADAA, for attorney's fees and costs incurred in this action, for prejudgment and post judgment interest as permitted by law, and for such other relief to which this Court finds him entitled.

VALDEZ AND WHITE LAW FIRM, LLC

By: 

Timothy L. White

P.O. Box 25646

Albuquerque, N.M. 87125

Phone: (505) 345-0289

Fax: (505) 345-2573

Email: timothywhitelaw@aol.com

FIRST JUDICIAL DISTRICT
COUNTY OF SANTA FE
STATE OF NEW MEXICO

GABE HERNANDEZ,

Plaintiff,

v.

Cause No. D-101-CV-2009-01173

LAS CRUCES SUN-NEWS,

Defendant.

STIPULATED WAIVER OF SERVICE OF SUMMONS

Defendant, by their undersigned counsel, stipulates and acknowledges receipt of plaintiff's request that they waive service of a summons in the action as captioned above. Defendant has also received a copy of the complaint in the action, two copies of this instrument, and a means by which they can return the signed waiver to plaintiff without cost.

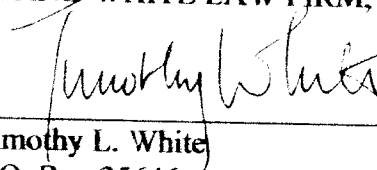
Defendant agrees to save the cost of service of a summons and an additional copy of the complaint in this lawsuit by not requiring that they be served with judicial process in the manner provided by Rule 1-004.

Defendant will retain all defenses or objections to the lawsuit or to the jurisdiction or venue of the court except for objections based on a defect in the summons or in the service of the summons.

Defendant understands that a judgment may be entered against them if an answer or motion under Rule 12 is not served upon plaintiff within sixty days after this 23rd day of April 2009. Dated: April 23, 2009

VALDEZ AND WHITE LAW FIRM, LLC

By



Timothy L. White
P.O. Box 25646

Albuquerque, New Mexico 87125

(505) 345-0289 - telephone

(505) 345-2573 - facsimile

Attorneys for Plaintiff

By:



M. Mitchell Moss

1100 Chase Tower

201 East Main Drive

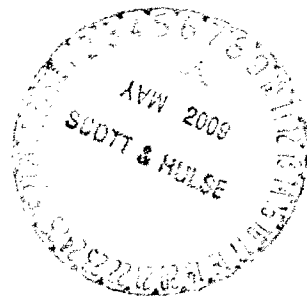
El Paso, Texas 79901

(915) 533-2493 - telephone


(915) 546-8333 - fax

Exhibit B

Valdez and White Law Firm, LLC
P.O. Box 25646
Albuquerque, N.M. 87125



M. Mitchell Moss
1100 Chase Tower
201 East Main Drive
El Paso, Texas 79901

FCM			
USPS® FIRST-CLASS MAIL®		U.S. POSTAGE \$1.17 FCM LG ENV 81301 Date of sale 05/05/09 02 1P00 APC FC0 107900304 142	
SHIP TO:		0 lb. 2.40 oz.	
EL PASO TX 79901 			
ZIP			
			
(420) 79901			

Valdez and White Law Firm, LLC

Suzanna R. Valdez

Timothy L. White

Attorneys

P.O. Box 25646
Albuquerque, NM 87125

Telephone (505) 345-0289
Facsimile (505) 345-2573

Svaldezl@aol.com
Timothywhite@aol.com

May 4, 2009

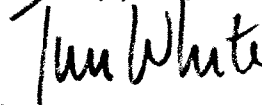
M. Mitchell Moss
1100 Chase Tower
201 East Main Drive
El Paso, Texas 79901

Re: Gabe Hernandez v. Las Cruces Sun News

Dear Mitch,

Enclosed is a copy of the complaint, two copies of the waiver of service and a stamped self-addressed envelope for you to return the waiver to me. These documents are being sent to you based on your email of April 14, 2009 indicating that you were authorized to accept service. Please call me if you have any questions.

Very truly yours,



Timothy L. White